

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3369 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PRAFULCHANDRA MANILAL MODI THROUGH P.O.A. HOLDER

Versus

COMPETENT AUTHORITY AND ADDITIONAL COLLECTOR (ULC)

Appearance:

MR GM JOSHI for Petitioners

MR DP JOSHI, AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 06/11/98

ORAL JUDGEMENT

Rule. Service of rule waived by Mr. D.P. Joshi,
Ld. A.G.P. for the respondents.

2. The petitioners have challenged impugned order dated 27/3/1998 declaring 1504 sq. mtrs. of land as excess vacant land and for setting aside any further consequent action taken pursuant to the impugned order.

3. It is the petitioners' case that they are descendants of one Shri Manilal Modi and they have been jointly holding several parcels of land, out of which survey no. 202/1 and 202/2 under final plot no. 32 admeasuring 7891 sq. mtrs. was reduced to 5903 sq. mtrs. upon implementation of Town Planning Scheme. It has further been the case of the petitioners that the exemption was given in respect of the said land for the purpose of agriculture u/S. 20 of the Urban Land (Ceiling and Regulations) Act, 1976 (for short 'the Ceiling Act'). In April 1995 the petitioners applied to the State Government for withdrawal of exemption. That application was pending as on the date of the present petition. It is the case of the petitioners that under the provisions of the Ceiling Act and the Rules made thereunder, when exemption is withdrawn, the petitioners would be entitled to either apply for exemption for any other permissible purpose or for filing Form No. 5 under Rule 11-A for constructing houses for weaker sections by virtue of sec. 21 of the Ceiling Act. In the background of such facts, the petitioners have challenged the impugned order alleging that without giving opportunity to the petitioners of being heard, the respondent - Competent Authority has declared 1504 sq. mtrs. of land as excess vacant land. The petitioners have, therefore, challenged the impugned order as premature in substance.

4. The respondent no.2 State Government filed affidavit-in-reply through its Deputy Secretary Mr. H.J. Shah inter-alia stating that although there was no application for revocation of agricultural exemption as alleged by the petitioners, the State Government has decided the application dated 29/4/1998 treating it as an application for revocation of exemption granted earlier as per the order Annexure-I to the affidavit-in-reply. Now on a reference to Annexure-I dated 18/9/1998 it would appear that the Government had taken a decision to revoke the exemption as aforesaid in respect of the land in question and the Competent Authority has been directed to take an appropriate decision u/S. 21 of the Ceiling Act as and when occasion arises. It appears that the petitioners will be required to move an appropriate application for permission/declaration u/S. 21 of the Ceiling Act within the statutory period. However, in view of the direction contained in order dated 18/9/1998 annexed with the affidavit-in-reply, the impugned order of declaring vacant land will have to be set aside. Following order is therefore, passed :-

Impugned order dated 27/3/1998 declaring 1504 sq.

mtrs. of land as excess vacant land out of the land bearing survey no. 202/1/2 (final plot no. 32 p.) of Ghatlodia is hereby set aside with further direction that as and when appropriate application is made as aforesaid within the statutory period, the same shall be dealt with and decided in accordance with law. Till that happens both the parties, namely petitioners and respondents will maintain status-quo with regard to land in question.

Rule made absolute only in the aforesaid terms.

No order as to cost. DSP.

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